

MONTANA LEGISLATIVE HISTORY

Chapter 623 19 83

Bill H 880 S _____ Original bill & history / c

H. Committee on Human Services

Hearing Date(s) Feb 21 ✓ c

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_____ c

Date Out Feb 21 ✓ c

S. Committee on Judiciary

Hearing Date(s) Mar 23 ✓ c

Mar 24 ✓ c

_____ c

_____ c

Mar 24 ✓ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

Note: The Free Conf. Comm. minutes were
not recorded.

HOUSE BILL NO. 880

INTRODUCED BY BERGENE, J. JENSEN, JONES, VINCENT, DARGO, MCCORMICK,
SCHULTZ, HENSTAD, KEYSER, IVERSON, SWITZER, COMPTON, DEVLIN,
SPATH, C. SMITH, CURTISS, MILLER, THOFT, HOZE, DOZIER,
KEENEAN, SCHYE, BERTELSEN, MERCALF, KETTERLY, ZABROCKI,
HARPER, ROUSH, HARRINGTON, DAILY, ABRAMS, HOLLIDAY, NISBET,
MCBRIDE, SAUNDERS, ADDY

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Human Services.
February 21, 1983	Committee recommend bill do pass. Report adopted.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass as amended. Correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 25, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 26, 1983	Second reading, concurrent in as amended.
March 28, 1983	Third reading, concurrent in. Ayes, 47; Nays, 0.

IN THE HOUSE

March 28, 1983	Returned to House with amendments.
April 4, 1983	Second reading, amendments not concurred in. On motion, Conference Committee requested. Conference Committee appointed.
April 8, 1983	Conference Committee dissolved. On motion Free Conference Committee requested. Free Conference Committee appointed.
April 14, 1983	Free Conference Committee reported.
April 15, 1983	Second reading, Free Conference Committee report adopted. Third reading, Free Conference Committee report adopted.
April 18, 1983	Free Conference Committee report adopted by Senate. Sent to enrolling. Reported correctly enrolled.

2ND READING: 02/22/83, DO PASS, AS AMENDED AYES: 67; NAYS: 31
REREFERRED TO 2ND READING: 02/22/83, DO PASS, AS AMENDED AYES: 75; NAYS: 23
3RD READING: 02/23/83, DO PASS AYES: 68; NAYS: 25

TRANSMITTED TO SENATE: 2/23/83

REREFERRED TO COMMITTEE ON JUDICIARY: 3/1/83

REREFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES: 3/2/83

HEARING: 3/14/83

MINORITY REPORT: 03/22/83, BE CONCURRED IN, AS AMENDED AYES: 17;
NAYS: 31

MAJORITY REPORT: 03/22/83, BE NOT CONCURRED IN, AS AMENDED AYES: 35;
NAYS: 15

BILL KILLED

1800 -- BERGENE, J. JENSEN, JONES, ET AL. -- REQUIRING REPORTING BY HEALTH CARE
PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF ABUSE, NEGLECT, AND EXPLOITATION OF
OLDER PERSONS; SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY FROM CIVIL
AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF THE DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER PERSONS;

INTRODUCED: 2/15/83

REREFERRED TO COMMITTEE ON HUMAN SERVICES: 2/15/83

HEARING: 2/21/83

REPORT: 02/21/83, DO PASS

2ND READING: 02/23/83, DO PASS, AS AMENDED AYES: 79; NAYS: 8

3RD READING: 02/23/83, DO PASS AYES: 82; NAYS: 10

TRANSMITTED TO SENATE: 2/23/83

REREFERRED TO COMMITTEE ON JUDICIARY: 3/1/83

HEARING: 3/23/83

REPORT: 03/25/83, BE CONCURRED IN, AS AMENDED

2ND READING: 03/26/83, BE CONCURRED IN, AS AMENDED AYES: 48; NAYS: 0

3RD READING: 03/28/83 AYES: 47; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/28/83

2ND READING: 04/04/83, BE NOT CONCURRED IN AYES: 83; NAYS: 4

CONFERENCE COMMITTEE APPOINTED: 04/04/83

CONFERENCE COMMITTEE DISSOLVED: 4/8/83

FREE CONFERENCE COMMITTEE APPOINTED: 4/8/83

FREE CONFERENCE COMMITTEE REPORT: 4/14/83

HOUSE

2ND READING: 04/15/83, ADOPTED AYES: 80; NAYS: 3

3RD READING: 04/15/83, ADOPTED AYES: 93; NAYS: 2

SENATE

2ND READING: 04/16/83, BE ADOPTED AYES: 48; NAYS: 0

3RD READING: 04/18/83, BE ADOPTED AYES: 50; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/21/83

SIGNED: 4/25/83, CHAPTER 623

SCHYE, DARKO, SAUNDERS, ET AL. -- TO AUTHORIZE THE MONTANA ARTS COUNCIL TO
A STATUE OF JEANNETTE RANKIN TO BE PLACED IN STATUARY HALL IN WASHINGTON, D.C.

1 *House* BILL NO. *880*
 2 INTRODUCED BY *Bergene, Jim Janssen, Vincent*
 3 *Reyer, Theron, Smith, Miller*
 4 *Donstad, Switzer, Darbin, Cuntis, Hoff*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY *DO3*
 6 HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF
 7 ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS;
 8 SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY
 9 FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF
 10 THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
 11 RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER
 12 PERSONS; AND PROVIDING PENALTIES."
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 14 Section 1. Short title. [Sections 1 through 10] may be
 15 cited as the "Montana Elder Abuse Prevention Act".
 16 Section 2. Legislative findings and purpose. The
 17 legislature finds that a need exists to provide for
 18 cooperation among law enforcement officials and agencies,
 19 courts, and state and county agencies providing human
 20 services in preventing the abuse, neglect, and exploitation
 21 of Montana's elderly through the identification and
 22 reporting of acts of such abuse, neglect, and exploitation.
 23 Section 3. Definitions. As used in [sections 1 through
 24 10], the following definitions apply:
 25 (1) "Abuse" means the infliction of physical or mental

1 injury or the deprivation of food, shelter, clothing, or
 2 services necessary to maintain the physical or mental health
 3 of an older person.
 4 (2) "Exploitation" means the unethical use of an older
 5 person, his money, or his property to the advantage of
 6 another.
 7 (3) "Mental injury" means an identifiable and
 8 substantial impairment of an older person's intellectual or
 9 psychological functioning or well-being.
 10 (4) "Neglect" means the failure of a guardian,
 11 employee of a public or private residential institution,
 12 facility, home, or agency, or any other person legally
 13 responsible in a residential setting for an older person's
 14 welfare to care for an older person by failing to provide
 15 food, shelter, clothing, or services necessary to maintain
 16 the physical or mental health of the older person.
 17 (5) "Older person" means a person who is at least 60
 18 years of age.
 19 (6) "Physical injury" means death, permanent or
 20 temporary disfigurement, or impairment of any bodily organ
 21 or function.
 22 Section 4. Reports required. (1) The first
 23 professional or official listed in subsection (3) who knows
 24 or has reasonable cause to suspect that an older person
 25 known to him in his official capacity has been subjected to

1 abuse, exploitation, or neglect shall promptly make a report
 2 containing the matters set forth in [section 5] and shall
 3 promptly send the report to the department of social and
 4 rehabilitation services and to the sheriff of the county or
 5 the police department of the municipality in which the older
 6 person resides and in which the acts that are the subject of
 7 the report occurred.

8 (2) If the report required in subsection (1) involves
 9 an act or omission of the department of social and
 10 rehabilitation services, a copy of the report may not be
 11 sent to the department but must be sent instead to the
 12 welfare department of the county in which the acts that are
 13 the subject of the report occurred.

14 (3) A report as required by subsection (1) must be
 15 made by:

16 (a) a physician, resident, intern, professional or
 17 practical nurse, physician's assistant, or member of a
 18 hospital staff engaged in the admission, examination, care,
 19 or treatment of persons;

20 (b) an osteopath, dentist, chiropractor, optometrist,
 21 podiatrist, medical examiner, coroner, or any other health
 22 or mental health professional;

23 (c) an ambulance attendant;

24 (d) a social worker or other employee of the state, a
 25 county, or a municipality assisting an older person in the

1 application for or receipt of public assistance payments or
 2 services;

3 (e) a person who maintains or is employed by a
 4 roominghouse, retirement home, nursing home, group home, or
 5 adult foster care home; or

6 (f) an attorney, unless he acquired knowledge of the
 7 facts required to be reported from a client and the
 8 attorney-client privilege applies.

9 (4) Any other person may submit a report as provided
 10 in subsection (1).

11 Section 5. Content of report. (1) The report required
 12 by [section 4] may be made in writing or orally, by
 13 telephone or in person. A person who receives an oral report
 14 must prepare it in writing as soon as possible.

15 (2) If possible, the report must contain the following
 16 information:

17 (a) the name and address of the older person;

18 (b) the name and address of the person, if any,
 19 responsible for his care;

20 (c) the name and address, if available, of the person
 21 who is alleged to have abused, neglected, or exploited the
 22 older person;

23 (d) the nature and extent of the abuse, neglect, or
 24 exploitation;

25 (e) any evidence of previous injuries sustained by the

1 older person; and

2 (f) the name and address of the person making the
3 report.

4 Section 6. Reports and records confidential --
5 permitted disclosures. (1) Except as provided in subsection
6 (2), a report made pursuant to [section 4] and the records
7 of any investigation made pursuant to such a report must be
8 kept confidential and are not available for public
9 inspection.

10 (2) A report made pursuant to [section 4], data or
11 information contained in such a report, and a record of any
12 investigation made pursuant to such a report must, upon
13 request, be provided to the following persons or entities in
14 this or any other state:

15 (a) a physician who has in his care an older person
16 who he reasonably believes was abused, neglected, or
17 exploited;

18 (b) an agency responsible for the care, treatment, or
19 supervision of the older person;

20 (c) a county attorney or other law enforcement
21 official who requires the information in connection with an
22 investigation of a violation of [sections 1 through 11];

23 (d) a court which has determined, in camera, that
24 public disclosure of the report, data, information, or
25 record is necessary for the determination of an issue before

1 it;

2 (e) a grand jury upon its determination that the
3 report, data, information, or record is necessary in the
4 conduct of its official business;

5 (f) a legal guardian or conservator of the older
6 person if the identity of the person who made the report is
7 protected and the legal guardian or conservator is not the
8 person suspected of the abuse, neglect, or exploitation; and

9 (g) the person named in the report as allegedly being
10 abused, neglected, or exploited if that person is not
11 legally incompetent.

12 (3) A report made pursuant to [section 4], data or
13 information contained in such a report, and a record of any
14 investigation made pursuant to such a report must also, upon
15 request, be made available to a person engaged in bona fide
16 research if the person alleged in the report to have
17 committed the abuse, exploitation, or neglect is later
18 convicted of violating [section 11] and if the identity of
19 the older person who is the subject of the report is not
20 disclosed to the researcher.

21 (4) If the person who is reported to have abused,
22 neglected, or exploited an older person is the holder of a
23 license, permit, or certificate issued by the department of
24 commerce or any other entity of state government under the
25 provisions of Title 37, the report must be submitted to the

1 entity that issued the license, permit, or certificate.

2 Section 7. Immunity from civil and criminal liability.
3 Any person who in good faith makes a report required or
4 authorized to be made under [section 4] is immune from civil
5 or criminal liability which might otherwise be incurred or
6 imposed as a result of such a report.

7 Section 8. Admissibility of evidence. In any
8 proceeding resulting from a report made pursuant to the
9 provisions of [sections 1 through 10] or in any proceeding
10 where the report or its content is sought to be introduced
11 into evidence, the report or its content or any other fact
12 related to the report or to the condition of the older
13 person who is the subject of the report may not be excluded
14 on the ground that the matter is or may be the subject of a
15 privilege granted in Title 26, chapter 1, part 8, except the
16 attorney-client privilege granted by 26-1-803.

17 Section 9. Duties of department of social and
18 rehabilitation services. (1) The department of social and
19 rehabilitation services shall develop and record demographic
20 information on older persons who are the subject of reports
21 under [section 4] and those alleged to be responsible for
22 the abuse, neglect, or exploitation.

23 (2) The department shall, when appropriate, provide
24 protective services under Title 53, chapter 5, part 2, for
25 an older person alleged to have been abused, neglected, or

1 exploited.

2 Section 10. Penalty. Any person who purposely or
3 knowingly violates [sections 1 through 9] is guilty of a
4 misdemeanor and upon conviction is punishable as provided in
5 46-18-212.

6 Section 11. Infliction of suffering on older person --
7 penalty. Any person 13 years of age or older who purposely
8 or knowingly causes or permits an older person to suffer
9 unjustifiable physical or mental injury as a result of
10 abuse, neglect, or exploitation, as defined in [section 3],
11 is guilty of a felony and upon conviction must be punished
12 by a fine not to exceed \$10,000 or imprisoned in the state
13 prison for a term not to exceed 5 years, or both.

14 Section 12. Codification instruction. Section 11 is
15 intended to be codified as an integral part of Title 45.

-End-

STATE OF MONTANA

REQUEST NO. 489-83

FISCAL NOTE

Form BD-15

in compliance with a written request received February 18, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 880 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 880 would require reporting of incidents of abuse, neglect and exploitation of older persons and specifies the duties of the Department of Social and Rehabilitation Services relating to abuse, neglect or exploitation of older persons.

ASSUMPTIONS:

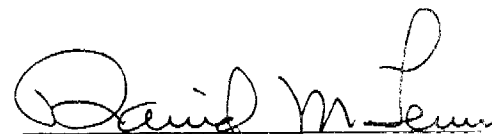
- 1) Assumes counties would continue 25% match of social worker salaries and travel.
- 2) Assumes the Social Services Block Grant has been fully allocated.

FISCAL IMPACT:

It is estimated this proposal would increase state expenditures as follows:

	<u>FY84</u>	<u>FY85</u>
Services	\$144,900	\$144,900
Operating Costs	<u>5,100</u>	<u>5,100</u>
Total	<u>\$150,000</u>	<u>\$150,000</u>
General Fund	\$113,025	\$113,025
County Funds	<u>36,975</u>	<u>36,975</u>
Total	<u>\$150,000</u>	<u>\$150,000</u>

FISCAL NOTE 16:BB/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83

delinquent youth. We are concerned with the kinds of children that come into an Attention Home like Linda Wood runs. The children have not committed any kind of serious offense.

CHAIRMAN HART closed the hearing on HOUSE BILL 856.

HOUSE BILL 880

REP. BERGENE, sponsor. This bill requires any abuse, neglect, or exploitation of older persons to be reported to the Department of Social and Rehabilitation Services. The bill describes legal obligations of and limitations on persons involved in the reporting. The bill also provides a penalty for inflicting suffering on older persons and for failure to report such incident.

PROPONENTS:

NORMA VESTRE, Department of Social and Rehabilitation Services, supports this bill.

CELINDA LAKE, Women's Lobbyist Fund, supports HOUSE BILL 880. She said abuse of the elderly is not a localized problem. It is a problem that Montana like other states has largely ignored, but it is a problem equal in magnitude to child abuse and spouse abuse--two areas which we have begun to deal with in terms of reporting, crisis intervention, and protective services (EXHIBIT 7).

CHARLES BRIGGS, Office of the Governor, also supported this legislation. He emphasized this is a reporting bill because what is in need is getting statistics and information through reporting requirements being able to gauge and assess the need that is out there. Quoting from Select Committee on Aging, U. S. House of Representatives, p. 14, "Abuse of the elderly by their loved ones and caretakers exist in frequency and rate only slightly less than child abuse on the basis of data supplied by the states. This Committee concluded that some 4% of the nation's elderly may be victims of some sort of abuse from moderate to severe." To put that into context, presently there are only 5% (60 years or older) residing in nursing homes. This problem is one that must be dealt with by Montana law. In section 11, page 8, dealing with the penalties, beginning with line 6--Infliction of suffering on older person -- penalty

Strike: Lines 11 through 13

Insert: "is subject to prosecution as defined by
Title 41-3-106, MCA"

This simply says if the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file probate charges against the alleged offender.

Page 9

Minutes of the Meeting of the Human Services Committee
February 21, 1983

The district court shall have original jurisdiction under this section.

RENEE BRERTON, Montana Senior Citizens Association, stated the major benefit her organization sees in this bill is the data collection capabilities that will be able to attract geographic and economic trends as they relate to the senior citizens. We hope this will address the number one problem with crime of the elderly.

DOUG OLSON, attorney, and Elderly Legal Services Developer, submitted written testimony (EXHIBIT 8) and stated, in part, in Montana, the Department of Social and Rehabilitation Services (SRS) is now charged with the responsibility for providing protective services for those persons 65 years or older for whom a request for assistance has been made. If SRS now has this responsibility why is HB 880 needed? Because without a mandatory reporting law, many cases that may require the assistance of protective services to resolve never come to the attention of SRS or law enforcement officials.

OPPONENTS: None

REP. BERGENE closed saying the way the bill is written, there is a recording system, the content is there, the allegation for SRS to investigate within the scope of their present staff and the gathering of data and providing the penalty condition. I talked with Mr. Briggs and he and I decided that perhaps we could work on the bill and present the amendment on the floor.

QUESTIONS:

REP. BRAND: Don't you think with this amendment you are putting in that the sentence will be much lighter to the person that is abusing?

CHARLES BRIGGS: Not necessarily. What we are trying to get at is family intervention. The way the law is written regarding child abuse, I am only offering that as conceivable framework. To require felony prosecution with the kind of stipulation that is there may impede the kind of intervention that is workable for the family. His primary concern was to provide a vehicle to get counseling for the family involved.

REP. BRAND: It says here "who purposely or knowingly" causes an older person to suffer. Do you think there is reconciliation between the parties if that is really happening.

CHARLES BRIGGS: I really don't know. They don't address possible kinds of persecution that might be involved.

REP. DRISCOLL: How many people are being prosecuted under that and what kind of sentences are being handed down?

CHARLES BRIGGS: I don't know.

NORMA VESTRE: There are 5,000 cases of child abuse each year. A very small percentage of those 5,000 would end up being prosecuted.

REP. DRISCOLL: How many have ended up in court?

NORMA VESTRE: Less than 10%.

REP. KEYSER: On page 7, section 7, line 2, it gives immunity from civil and criminal liability. If that was an irresponsible report, why shouldn't they be civilly responsible.

REP. BERGENE: I am interpreting that a little bit differently than you. I am interpreting that to mean that anyone who makes a report can, criminally or civilly, come under any sort of liability. If the person who made the report in good faith and the health professional really thought they were seeing something that was obvious news to them, they could not be held for civil or criminal liability.

REP. KEYSER: I hope it isn't so broad that a person can make a report that isn't true against somebody and then we are going to make them civilly not responsible for their actions.

NORMA VESTRE: When you put that in, it encourages people to report.

REP. WINSLOW: In response to the number of people that are prosecuted regarding child abuse, isn't the reason a lot of those prosecutions don't take place that there is a way for bridges to be rebuilt. Wouldn't you think, in the case of the elderly, that is probably true, too.

NORMA VESTRE: I am sure that is true.

CHAIRMAN HART closed the hearing on HOUSE BILL 880.

EXECUTIVE SESSION

HOUSE BILL 269

This bill would allow a county rather than a city, town, or municipality to establish a fund for licensed day-care centers.

REP. JAN BROWN moved that HOUSE BILL 269 DO PASS.

REP. JAN BROWN moved that the amendments to HOUSE BILL 269 be accepted (EXHIBIT 9).

The motion passed unanimously.

REP. JAN BROWN moved that HOUSE BILL 269 DO PASS AS AMENDED.

The motion was carried unanimously.

HOUSE BILL 880

This bill requires any abuse, neglect, or exploitation of older persons to be reported to the Department of Social and Rehabilitation Services.

REP. KEYSER moved HOUSE BILL 880 DO PASS.

The motion carried unanimously.

HOUSE BILL 873

This bill would create a state Office of Aging in the Office of the Governor.

REP. WINSLOW moved HOUSE BILL 873 DO PASS.

The motion carried unanimously.

HOUSE BILL 856

This bill would permit a court to allow a youth limited emancipation at the age of 16.

REP. FARRIS moved HOUSE BILL 856 DO PASS.

The motion carried unanimously.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917



TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, IN SUPPORT OF HB 880
BEFORE HOUSE HUMAN SERVICES COMMITTEE ON FEBRUARY 21, 1983

The Women's Lobbyist Fund Supports HB 880 calling for reporting of elderly abuse. Abuse of the elderly is not a localized problem. It is a problem that Montana like other states has largely ignored, but it is a problem equal in magnitude to child abuse and spouse abuse -- two areas which we have begun to deal with in terms of reporting, crisis intervention, and protective services. HB 880 is an important step toward acknowledging and dealing with the problems we have with elderly abuse. Sixteen other states have reporting laws like this.

According to UCLA's Center for Gerontological Studies, 4% of the nation's elderly are physically abused and six times that are financially, verbally, or psychologically abused. The incidence of physical abuse of the elderly is as high as the incidence of physical abuse of children. Victims of elderly abuse are often as dependent on their abuser as victims of child abuse. According to Souza report on Elder Abuse, 77% of victims of elder abuse are moderately to totally dependent on their abuser as a caregiver. Incidents of elderly abuse are badly underreported because the victims are often ashamed, isolated, and scared of being institutionalized and because the abusing situations usually involve family member and the family unit.

Most elderly abuse victims are single, female, over 75, and with a disability which makes them even more dependent on their caretaker. Abusers are generally relatives upon whom the elderly person is dependent for personal care, shelter, and support.

The premise of reporting laws like HB 880 is that victims of elder abuse are often as vulnerable and dependent as the children whom we have protected by similar laws. Our elderly need the extra societal protection of these kinds of laws. We would encourage this committee to pass HB 880.

MONTANA SENIORS' ADVOCACY ASSISTANCE

P.O. Box 232 • Capitol Station • Helena, Montana 59620
(406) 449-4676 (Helena) • 1-800-332-2272 (Toll-free)

DOUGLAS B. OLSON, Attorney
Elderly Legal Services Developer

LENORE F. TALIAFERRO
Montana State Nursing Home Ombudsman

February 21, 1983

Members,
House Human Services Committee
Montana House of Representatives
48th Legislature
State Capitol
Helena, Montana 59620

re: House Bill 880

Dear Representatives:

Montana Seniors' Advocacy Assistance (MSAA) performs under contract the responsibilities assigned to Montana under the federal Older Americans Act for advocacy assistance for senior citizens in the areas of legal services, long-term care and in part, protective services. Protective services as used in this context means encouraging the development of better means for assisting those senior citizens who need help in managing their personal or financial affairs or both. The scope of such assistance can range from guidance or lending a helping hand to the creation of a guardianship or conservatorship.

On a national basis, studies are revealing that a great percentage of senior citizens as they grow old become more dependent on those around them for help in managing their affairs. It is in these cases that an elderly person may become susceptible to being abused, exploited or neglected by those persons to whom they have entrusted their care. Sometimes such abuse is by accident or oversight in the case of inadequate health care or nutrition but often it comes as a result of physical assault or mental abuse. How widespread is such abuse in Montana? One can only hazard a guess at this time because there is no requirement that suspected cases be reported to social and law enforcement personnel so that remedial action can be taken.

House Bill 880 sponsored by Rep. Bergene and others may not be the complete answer to this growing national problem but it will put Montana on the right road toward reducing the abuse of the elderly. Dr. Ronald Rivers, the state medical examiner or so-called "Quincy" for Montana, supports this legislation because it will help all of us to recognize that a problem does exist in this area that needs to be resolved. Until child abuse reporting became mandatory, little progress was made toward educating the public of how prevalent it was in our society and how it could be reduced. Without mandatory reporting of suspected cases, elder abuse is often only confirmed too late, at the time of an autopsy.

Letter to House Human Services Comm.
re: House Bill 880
February 21, 1983
Montana Seniors' Advocacy Assistance
Page 2

If reports are made, protective services can be provided in confirmed cases of elder abuse, neglect or exploitation. The victim can be re-located in a safer, healthier environment if necessary.

Nationally, more and more states are enacting laws each year that do require reporting of suspected cases of abuse by those persons who are in the best position to notice that a problem may exist. Wyoming adopted such a law in 1981 and Utah also has one in place among those states that Montana closely resembles.

In Montana, the Department of Social and Rehabilitation Services (SRS) is now charged with the responsibility for providing protective services for those persons 65 years or older for whom a request for assistance has been made. (See section 53-5-204, MCA, a copy of which is attached). If SRS now has this responsibility why is HB 880 needed? Because without a mandatory reporting law, many cases that may require the assistance of protective services to resolve never come to the attention of SRS or law enforcement officials. Elder abuse may also justify stiff sanctions depending upon whether or not extreme physical or mental abuse or neglect is involved. The options available under present law are inadequate, especially in cases of deprivation of needed medical care or nutrition.

A bill was introduced in the 1982 Montana Legacy Legislature last September concerning mandatory reporting of elder abuse. The senior citizens there believed that it portrayed a problem that warranted legislative resolution. HB 880 evolved in part from Legacy Legislature substitute Bill No. 13.

The Adult Protective Services program within SRS has not received the attention, support or staffing that it properly deserves in comparison to the Child Abuse Program. The Legislative Fiscal Analyst (LFA) report suggests that SRS could survive a cut in about 18 full-time equivalent employees (FTEs) without impacting the delivery of services or the programs it administers. MSAA disagrees with the LFA that SRS could withstand the loss of 18 FTEs. These persons could be used to help improve the delivery of programs such as child and adult protective services. HB 880 should not necessarily require SRS to hire additional FTEs if SRS is not forced to loose the 18 FTEs referred to above.

In summary, HB 880 is clearly needed as a tool to providing better care and assistance to vulnerable elderly Montanans. Without knowledge of a suspected case of abuse, neglect or exploitation, no steps can be taken to investigate. Your favorable action on HB 880 would be greatly appreciated.

Letter to House Human Services Comm.
re: House Bill 880
February 21, 1983
MSAA
Page 3

MSAA has the following housekeeping amendments to suggest regarding HB 880:

1. Page 3, Line 3
Following: "promptly"
Strike: "send"
Insert: "transmit"
2. Page 4, Line 4
Following: "roominghouse,"
Insert: "boardinghouse"
3. Page 5, Line 9
Following: "inspection."
Insert: "Any person receiving a report, data or information pursuant to subsections (2) (a) through (g) must keep such information confidential unless it is required to be divulged in a proceeding for enforcement of this (act)."

Thank you for an opportunity to comment on this legislation.

Sincerely,

Douglas B. Olson

Douglas B. Olson
Attorney

Montana Seniors' Advoc. Asst.

attachements.

Part 2 — Protective Services

- 53-5-201. Short title.
- 53-5-202. Definitions.
- 53-5-203. Purpose.
- 53-5-204. Duties of department.
- 53-5-205. Departmental authority.
- 53-5-206. Annual reports.
- 53-5-207. Protective services not creating guardianship or conservatorship.

Protective Services

53-5-201. Short title. This part may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

History: En. 71-1914 by Sec. 1, Ch. 232, L. 1975; R.C.M. 1947, 71-1914.

53-5-202. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of social and rehabilitation services.
- (2) "Aged person" means an aged person as defined by the department.
- (3) "Disabled adult" means a person 18 years of age or over who is defined by the department as disabled but not developmentally disabled.
- (4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

History: En. 71-1915 by Sec. 2, Ch. 232, L. 1975; R.C.M. 1947, 71-1915.

53-5-203. Purpose. To ensure that aged persons or disabled adults in the state be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, this legislature declares the department to be recognized as the public agency responsible for providing those services.

History: En. 71-1916 by Sec. 3, Ch. 232, L. 1975; R.C.M. 1947, 71-1916.

* **53-5-204. Duties of department.** The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

History: En. 71-1917 by Sec. 4, Ch. 232, L. 1975; R.C.M. 1947, 71-1917.

53-5-205. Departmental authority. The department may implement a program for protective services by establishing appropriate rules which are not inconsistent with the department's activities.

History: En. 71-1918 by Sec. 5, Ch. 232, L. 1975; R.C.M. 1947, 71-1918.

53-5-206. Annual reports. The department shall make annual reports on the number of people served by this part and the type of protective services made available to the aged persons and disabled adults of Montana.

History: En. 71-1919 by Sec. 6, Ch. 232, L. 1975; R.C.M. 1947, 71-1919.

53-5-207. Protective services not creating guardianship or conservatorship. The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

History: En. Sec. 7, Ch. 343, L. 1981.

Compiler's Comments
Codification Instruction: Subsection (2), sec. 8, Ch. 343, L. 1981, provided: "Section 7 is intended to be codified as an integral part of Title 53, chapter 5, part 2, and the provisions of Title 53, chapter 5, part 2, apply to section 7."

DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES

CHAPTER 5

Sub-Chapter 1

Protective Services

Rule	46.5.101	Purpose of Adult Protective Services
	46.5.102	Definitions
	46.5.103	Adult Protective Services Available
	46.5.104	Adult Protective Services, Eligibility
	46.5.105	Procedures to Obtain Adult Protective Services

46.5.101 PURPOSE OF ADULT PROTECTIVE SERVICES Adult protective services are services intended to prevent or remedy neglect, exploitation or abuse of aged persons or disabled adults who are unable to protect their own interests. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-5-205 MCA; NEW, 1978 MAR, p. 206, Eff. 2/25/78.)

46.5.102 DEFINITIONS As used in this sub-chapter, the following definitions apply:

- (1) "Aged person" means a person 65 years of age or older.
- (2) "Disabled adult" means a person of 18 through 65 years of age who is:
 - (a) determined to be disabled by the social security administration;
 - (b) determined fully disabled by the veterans' administration;
 - (c) determined disabled by the department's vocational rehabilitation division;
 - (d) adjudicated disabled by a court of competent jurisdiction; or
 - (e) determined eligible for the medically needy program because of disability;
- (f) does not include the developmentally disabled as defined in section 53-20-102, MCA.
- (3) "Protective services" means services directed at preventing or remedying neglect, abuse, or exploitation of aged or disabled adults.
- (4) "Voluntary services" means protective services requested or accepted by an aged person or disabled adult.
- (5) "Non-voluntary services" means protective services provided under court-ordered legal guardianship to a ward who is aged or disabled.
- (6) "Ward" means an incapacitated person for whom a guardian has been appointed by a court of competent jurisdiction.
- (7) "Department" means the department of social and rehabilitation services. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-5-205 MCA; NEW, 1978 MAR, p. 206, Eff. 2/25/78.)

46.5.103 ADULT PROTECTIVE SERVICES AVAILABLE (1) Voluntary services include, but are not limited to:

- (a) identifying persons needing protective services through referrals;
 - (b) investigating referrals and diagnosing problems to determine extent and type of services needed;
 - (c) counseling for the individual and family;
 - (d) arranging or facilitating appropriate alternative living arrangements or protective placements;
 - (e) enlisting support and services from interested persons or agencies;
 - (f) assisting in arrangement of health related services;
 - (g) assisting in locating legal services;
 - (h) providing advocacy; or
 - (i) assisting in arranging services to preserve or enhance the current living arrangement when desirable in the best interest of the aged person or disabled adult.
- (2) Non-voluntary services may include any voluntary service under subsection (1) above, and any other services ordered by the court through guardianship proceedings. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-5-205 MCA; NEW, 1978 MAR, p. 206, Eff. 2/25/78.)

46.5.104 ADULT PROTECTIVE SERVICES, ELIGIBILITY

(1) Adult protective services will be provided when necessary without regard to income to any person who is aged or disabled as defined in ARM 46.5.102. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-5-203 through 53-5-205 MCA; NEW, 1979 MAR p. 1705, Eff. 12/28/79.)

46.5.105 PROCEDURES TO OBTAIN ADULT PROTECTIVE SERVICES

- (1) The welfare department of the county in which the applicant resides or is found receives and investigates requests for protective services.
- (2) Request for service is accepted from aged or disabled persons on their own behalf or from any relative or persons interested in the individual's welfare.
- (3) A request for service may be written or oral, however, a written request on a form available from the county welfare department is preferred. (History: Sec. 53-2-201 MCA; IMP, Sec. 53-5-205 MCA; NEW, 1978 MAR p. 206, Eff. 2/25/78; AMD, 1979 MAR p. 1705, Eff. 12/28/79.)

VISITOR'S REGISTER

HOUSE HUMAN SERVICES COMMITTEE

BILL **HOUSE BILL 880**

DATE 2-21-83

SPONSOR REP. BERGENE

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES

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STANDING COMMITTEE REPORT

February 21 19...

MR. SPEAKER

We, your committee on HUMAN SERVICES

having had under consideration HOUSE 577 Bill No. 88

first reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING REPORTING BY HEALTH CARE PROFESSIONALS AND OTHER PERSONS OF INCIDENTS OF ABUSE, NEGLECT, AND EXPLOITATION OF OLDER PERSONS; SPECIFYING THE USE OF THE REPORTS; PROVIDING FOR IMMUNITY FROM CIVIL AND CRIMINAL LIABILITY; SPECIFYING THE DUTIES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES RELATING TO ABUSE, NEGLECT, OR EXPLOITATION OF OLDER PERSONS AND PROVIDING PENALTIES."

Respectfully report as follows: That HOUSE Bill No. 88

DO PASS

CONSIDERATION OF HOUSE BILL 684: Representative Ramirez, sponsor of the bill, testified that this bill was proposed to correct a problem created in the 1979 Legislature with HB608 regarding the possession and sale of dangerous drugs. Representative Ramirez stated that there should be a ten-year sentence for the second conviction for possession of dangerous drugs, and a twenty-year sentence for the third conviction for sale of dangerous drugs. Representative Ramirez stated that this is a serious offense and should have a strict mandatory sentence.

There being no proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 880: Representative Bergene, sponsor of the bill, testified that HB880 deals with abuse of elderly persons. She informed the Committee that abuse of the elderly is as common as child abuse in Montana. Representative Bergene then opened the hearing to proponents of HB880 and reserved the right to close.

PROPOSERS: Ms. Celinda C. Lake, representing the Women's Lobbyist Fund, submitted written testimony (see attached Exhibit "H") and testified that abuse of the elderly is equal in magnitude to child abuse and spouse abuse. Ms. Lake stated that 4 percent of the elderly are abused and the abuser in 70 percent of the cases is the person whom the elderly person depends on for his or her care.

Ms. Lake feels that since we protect children from abuse, we should also attempt to protect the elderly.

Ms. Norma Vestre, representing the Montana Department of Social and Rehabilitation Services, testified that she supports HB880.

Mr. Douglas B. Olson, representing the Montana Senior's Advocacy Assistance, submitted written testimony (see attached Exhibit "I") in favor of HB880. Mr. Olson testified that the amount of elderly abuse is unknown in Montana, because of a lack of reporting of incidents. Mr. Olson stated that HB880 mirrors our current child abuse laws and gives persons who are trained in this field a chance to intervene if they suspect an elderly person is being abused. Mr. Olson testified that the SRS has an adult protection service which tries to help in situations where an elderly person is being abused. Mr. Olson also stated that he believes nursing home administrators will offer amendments to HB880, and he is opposed to these amendments.

Mr. Charles Briggs of the Governor's Office, testified that we do not hear many instances of abuse of the elderly or what kinds of abuse are taking place, since many instances are not reported. Mr. Briggs testified that a Congressional Committee

formed to investigate elderly abuse, found that the number of abuses is slightly less than the amount of abused children. Mr. Briggs believes that the key to HB880 is the mandatory reporting aspect. Mr. Briggs believes this mandatory reporting is necessary to obtain data. Representative Bergene closed the hearing by stating that she noticed some "technical flaws" in the bill that need to be changed. Senator Turnage stated that he has problems with the "sovereign immunity" provision in Section 7, and that he feels the bill should contain a severability clause.

Ms. Shirley Hunnis, Montana Nurses Association, supports HB880.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 856: Representative Bergene, sponsor of the bill, stated that this bill provides for limited emancipation of people ages 16-18.

Ms. Billie Nimmons, a senior in high school, testified that she believes this bill in in the best interest of the children of Montana. Ms. Nimmons has lived alone and been self-supporting since she lost her parents. Ms. Nimmons feels this bill will save money for the SRS and save some children from having to go through the trauma of being placed in a foster home.

Mr. Dick Meeker, Chief Probation Officer for the First Judicial District, testified that 50 percent of the children who come into contact with the probation system are abused children. He also testified that HB856 is an effort to help children who are responsible enough to establish themselves in the community yet still give guidance in areas where it is needed. Mr. Meeker reminded the Committee that abused children become abusive parents.

Ms. Norma Vestre testified that she supports HB856.

Ms. Stacey Flaherty, representing the Women's Lobbyist Fund, submitted written testimony (see attached Exhibit "J") in support of HB856.

OPPOSITION: Mr. Glen Hufstetter, Chief Probation Officer for the Eleventh Judicial District, testified that he has a few problems with the bill.. One of his problems is that he is concerned because under this system, a youth could apply and obtain food stamps at state expense. Mr. Hufstetter also wondered who would be responsible for the attorney fees incurred in removing the child from the home. Mr. Hufstetter was also concerned as to what would happen in the situation where this privilege had to be revoked. Mr. Hufstetter was concerned with how a child would be able to pay his bills, such as medical costs.

WOMEN'S LOBBYIST FUND

Box 1099
Helena, MT 59624
449-7917

Exhibit "H"
March 23, 1983
HB880



TESTIMONY OF CELINDA C. LAKE, WOMEN'S LOBBYIST FUND, IN SUPPORT OF HB 880

The Women's Lobbyist Fund Supports HB 880 calling for reporting of elderly abuse. Abuse of the elderly is not a localized problem. It is a problem that Montana like other states has largely ignored, but it is a problem equal in magnitude to child abuse and spouse abuse -- two areas which we have begun to deal with in terms of reporting, crisis intervention, and protective services. HR 880 is an important step toward acknowledging and dealing with the problems we have with elderly abuse. Sixteen other states have reporting laws like this.

According to UCLA's Center for Gerontological Studies, 4% of the nation's elderly are physically abused and six times that are financially, verbally, or psychologically abused. The incidence of physical abuse of the elderly is as high as the incidence of physical abuse of children. Victims of elderly abuse are often as dependent on their abuser as victims of child abuse. According to Souza's report on Elder Abuse, 77% of victims of elder abuse are moderately to totally dependent on their abuser as a caregiver. Incidents of elderly abuse are badly underreported because the victims are often ashamed, isolated, and scared of being institutionalized and because the abusing situations usually involve family members and the family unit.

Most elderly abuse victims are single, female, over 75, and with a disability which makes them even more dependent on their caretaker. Abusers are generally relatives upon whom the elderly person is dependent for personal care, shelter, and support.

The premise of reporting laws like HB 880 is that victims of elder abuse are often as vulnerable and dependent as the children whom we have protected by similar laws. Our elderly need the extra societal protection of these kinds of laws. We would encourage this committee to pass HB 880.

MONTANA SENIORS' ADVOCACY ASSISTANCE

P.O. Box 232 • Capitol Station • Helena, Montana 59620
(406) 449-4676

March 23, 1983
HB880

DOUGLAS B. OLSON, Attorney

March 23, 1983

Senators
Senate Judiciary Committee
48th Legislative Session
Capitol Station
Helena, Montana 59620

re: House Bill 880

Dear Chairman Turnage and Committee Members:

Montana Seniors' Advocacy Assistance (MSAA) is responsible under a grant from the federal Older Americans Act for improving legal rights and protective services for senior citizens. On a national level we hear and read stories of the elderly being abused, neglected or exploited more frequently than we would imagine possible. Such abuse, neglect and exploitation does also occur in Montana as well but the extent to which it occurs is unknown due to no established reporting system at the present time. The persons who often are the abusers are family members, neighbors or strangers.

What needs to be done to alleviate or eliminate such abuse? Montana needs to have a requirement that mandates that those individuals who are in the best position to notice or suspect that an elderly person is being abused, neglected or exploited file a report with our welfare and law enforcement agencies. Such a requirement is not without precedent for many states now have laws requiring reporting of suspected cases of elder abuse, and most states require reporting of suspected cases of child abuse. Once a report of a suspected case is received, an investigation can be undertaken by trained social workers and where warranted protective services offered and/or referrals made to law enforcement officials if criminal laws may have been violated.

House Bill 880 sponsored by Rep. Bergene and 35 other legislators would if enacted into law provide Montana's elderly population with the same protections that are afforded to children who may be abused. The bill as originally introduced was amended on the floor of the house to make it more closely resemble Montana's child abuse laws found in Title 41, Chapter 3, MCA. The Bill as it comes to the Senate does not do everything that MSAA would like to see in this type of a bill but it is a good start. We supported before the House Human Services Committee strong sanctions or penalties against those who would cause an elderly person to suffer physical or mental injury especially in those cases involving neglect or exploitation not covered by the present criminal laws for assault. It was the opinion of the House that at this time this legislation should not include added criminal penalties and MSAA is willing to accept the House's judgment for the next two years.

MSAA letter to Senate Judiciary Committee
re: House Bill 880
March 23, 1983
Page 2

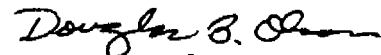
This bill will provide for confidentiality of reports of suspected cases of abuse to protect the identity of the reporter as well as to protect the rights of suspected abusers until an investigation can be completed. In addition, this bill will enable Montana to compile more accurate statistics as to the frequency and type of cases in Montana regarding the abuse, neglect and exploitation of our senior citizens.

There was no opposition to this legislation in the House and I can not think of any segment of our society that is not more deserving of such legislation than the frail and dependent elderly. I strongly encourage your support of House Bill 880 and would be happy to answer any questions the Committee may have.

It has come to our attention that an amendment may be offered by representatives of the nursing home industry that if a complaint or report is made that suspects one of their employees of abuse of a resident of one of their facilities that the nursing home be given a copy of the report. We would strongly oppose amendment of House Bill 880 to incorporate this proposal. The bill as presently drafted correctly limits access to these reports to welfare and law enforcement officials. If an employee of their facility is suspected of abusing an elderly resident, that facility will learn about it when the report is being investigated if the facts warrant their involvement.

Thank you for an opportunity to comment on House Bill 880.

Sincerely,



Douglas B. Olson
Attorney

Montana Seniors' Advocacy Assistance

FURTHER CONSIDERATION OF HOUSE BILL 565: Senator Daniels had questions as to who decides what is legible and what is illegible. The Committee decided that HB565 should be amended to provide that the Clerks and Recorders must attach a note to the recorded document stating that this document is illegible and the only copy available.

ACTION ON HOUSE BILL 565: Senator Crippen moved that HB362 BE RECONSIDERED. This motion carried unanimously. Senator Shaw moved that the proposed amendments BE ADOPTED. This motion carried unanimously. Senator Mazurek moved that HB362 BE CONCURRED IN AS AMENDED. This motion carried with Senators Daniels and Shaw voting in opposition.

FURTHER CONSIDERATION OF HOUSE BILL 191: Senator Turnage questioned the tax implications of HB191. He questioned the use of the word "common." Senator Mazurek did not like the use of the word "disposition."

ACTION ON HOUSE BILL 191: Senator Daniels moved that HB191 BE TABLED. This motion carried unanimously.

ACTION ON HOUSE BILL 856: Senator Mazurek moved that the proposed amendment to HB856 BE ADOPTED. This motion carried unanimously. Senator Berg moved that HB856 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 880: Senator Mazurek moved that a severability clause to HB880 BE ADOPTED. This motion carried unanimously. Senator Berg moved that HB880 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 357: Proposed amendments to HB357 were submitted to the Committee, and Senator Mazurek moved that these amendments BE ADOPTED. This motion carried unanimously. Senator Mazurek then moved that HB357 BE CONCURRED IN AS AMENDED. This motion carried unanimously.

ACTION ON HOUSE BILL 540: Senator Shaw moved that HB540 BE TABLED. This motion failed. Senator Berg moved that the proposed amendments to HB540 BE ADOPTED. This motion carried with Senator Daniels voting in opposition. Senator Mazurek moved that HB540 BE CONCURRED IN AS AMENDED. This motion carried with Senators Galt, Shaw and Daniels voting in opposition.

ACTION ON HOUSE BILL 677: Senator Daniels moved that HB677 BE CONCURRED IN. This motion failed. Senator Daniels moved that